

Assembly Bill No. 2863

CHAPTER 535

An act to amend Sections 218 , 218.3, and 739.5 of, and to add Article 3 (commencing with Section 2868) to Chapter 9 of Part 2 of Division 1 of, the Public Utilities Code, relating to electricity.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2863, Leno. Independent solar energy producers: master-meter customers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. An electrical corporation is defined as including every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. Existing law requires that, when gas or electric service is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer charge each user at the same rate which would be applicable if the user were receiving gas or electricity directly from the gas or electrical corporation. Existing law creates further requirements for master-meter customers and for the corporations which provide service to them.

This bill would require a master-meter customer to charge each user a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation.

This bill would additionally create an exception from the definition of an "electrical corporation" for an independent solar energy producer, as defined.

(2) Existing law defines an "electric service provider" as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the commission and provide for the authorization of direct transactions between electric service providers and end-use customers.

This bill would recast the existing definition and additionally create an exception for an independent solar energy producer, as defined.

(3) This bill would require an independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy

system to an entity or person for use in a residence to make certain disclosures to the buyer or lessee and to record a Notice of an Independent Solar Energy Producer Contract and related documents, as provided. The bill would impose specific information requirements on independent solar energy producers. The bill would require all contracts for the sale of electricity by an independent solar energy producer to an entity or person for use in a residence to be made available to the commission upon its request, and would provide for confidentiality of those contracts except as otherwise provided. The bill would require a master-meter customer of an electric utility who purchases electricity or leases a solar energy system from an independent solar energy producer, and who provides electric service to users who are tenants of a mobilehome park, apartment building, or similar residential complex, to charge each user of the electric service that is under a submetered system a rate for the solar generated electricity not to exceed the rate charged by the independent solar energy producer or the electric utility's rate for an equivalent amount of electricity, whichever is lower. The bill would impose civil liability on those who violate specified provisions in the amount of actual damages suffered by a transferee or transferor of the real property as a consequence of that violation.

The people of the State of California do enact as follows:

SECTION 1. Section 218 of the Public Utilities Code is amended to read:

218. (a) "Electrical corporation" includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.

(b) "Electrical corporation" does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated or on real property immediately adjacent thereto, unless there is an intervening public street constituting the boundary between the real property on which the electricity is generated and the immediately adjacent property and one or more of the following applies:

(A) The real property on which the electricity is generated and the immediately adjacent real property is not under common ownership or control, or that common ownership or control was gained solely for purposes of sale of the electricity so generated and not for other business purposes.

(B) The useful thermal output of the facility generating the electricity is not used on the immediately adjacent property for petroleum production or refining.

(C) The electricity furnished to the immediately adjacent property is not utilized by a subsidiary or affiliate of the corporation or person generating the electricity.

(3) Sale or transmission to an electrical corporation or state or local public agency, but not for sale or transmission to others, unless the corporation or person is otherwise an electrical corporation.

(c) “Electrical corporation” does not include a corporation or person employing landfill gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency.

(d) “Electrical corporation” does not include a corporation or person employing digester gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency, if the sale or transmission of the electricity service to a retail customer is provided through the transmission system of the existing local publicly owned electric utility or electrical corporation of that retail customer.

(e) “Electrical corporation” does not include an independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.

(f) The amendments made to this section at the 1987 portion of the 1987–88 Regular Session of the Legislature do not apply to any corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.

SEC. 2. Section 218.3 of the Public Utilities Code is amended to read:

218.3. (a) “Electric service provider” means an entity that offers electrical service to customers within the service territory of an electrical corporation and includes the unregulated affiliates and subsidiaries of an electrical corporation.

(b) “Electric service provider” does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation or a public

agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility.

(c) “Electric service provider” does not include an independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.

SEC. 3. Section 739.5 of the Public Utilities Code is amended to read:

739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level that will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

(b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.

(c) An electrical or gas corporation furnishing service to a master-meter customer shall furnish to each user of the service within a submetered system every public safety customer service that it provides beyond the meter to its other residential customers. The corporation shall furnish a list of those services to the master-meter customer who shall post the list in a conspicuous place accessible to all users. Every corporation shall provide these public safety customer services to each user of electrical or gas service under a submetered system without additional charge unless the corporation has included the average cost of these services in the rate differential provided to the master-meter customer on January 1, 1984, in which case the commission shall deduct the average cost of providing these public safety customer services when approving rate differentials for master-meter customers.

(d) Every master-meter customer is responsible for maintenance and repair of its submeter facilities beyond the master-meter, and nothing in this section requires an electrical or gas corporation to make repairs to or perform maintenance on the submeter system.

(e) Every master-meter customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual user generally in accordance with the form and content of bills of the corporation to its

residential customers, including, but not limited to, the opening and closing readings for the meter, and the identification of all rates and quantities attributable to each block in the applicable rate structure. The master-meter customer shall also post, in a conspicuous place, the applicable prevailing residential gas or electrical rate schedule, as published by the corporation.

(f) The commission shall require that every electrical and gas corporation shall notify each master-meter customer of its responsibilities to its users under this section.

(g) The commission shall accept and respond to complaints concerning the requirements of this section through the consumer affairs branch, in addition to any other staff that the commission deems necessary to assist the complainant. In responding to the complaint, the commission shall consider the role that the office of the county sealer in the complainant's county of residence may have in helping to resolve the complaint and, where appropriate, coordinate with that office.

SEC. 4. Article 3 (commencing with Section 2868) is added to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code, to read:

Article 3. Independent Solar Energy Producers

2868. The following definitions shall apply for purposes of this article:

(a) "Electric utility" means an electrical corporation as defined in Section 218, a local publicly owned electric utility as defined in Section 9604, or an electrical cooperative as defined in Section 2776.

(b) "Independent solar energy producer" means a corporation or person employing one or more solar energy systems for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of, or sale to, not more than two other entities or persons per generation system solely for use on the real property on which the electricity is generated, or on real property immediately adjacent thereto.

(c) "Real property" means a single parcel of land.

(d) "Solar energy system" means any configuration of solar energy devices that collects and distributes solar energy for the purpose of generating electricity and that has a single interconnection with the electric utility transmission or distribution network.

2869. (a) (1) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system, to an entity or person, for use in a residence shall include a disclosure to the buyer or lessee that, at a minimum, includes all of the following:

(A) A good faith estimate of the kilowatthours to be delivered by the solar energy system.

(B) A plain language explanation of the terms under which the pricing will be calculated over the life of the contract and a good faith estimate of the price per kilowatthour.

(C) A plain language explanation of operation and maintenance responsibilities of the contract parties.

(D) A plain language explanation of the contract provisions regulating the disposition or transfer of the contract in the event of a transfer of ownership of the residence, as well as the costs or potential costs associated with the disposition or transfer of the contract.

(E) A plain language explanation of the disposition of the solar energy system at the end of the term of the contract.

(2) The commission may require, as a condition of receiving ratepayer funded incentives, that an independent solar energy producer provide additional disclosure to the buyer or lessee, the commission, or both.

(b) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system, to an entity or person, for use in a residence shall record a Notice of an Independent Solar Energy Producer Contract, within 30 days of the signing of the contract, against the title to the real property on which the electricity is generated, and against the title to any adjacent real property on which the electricity will be used, in the office of the county recorder for the county in which the real property is located. The notice shall include all of the following and may include additional information:

(1) (A) If the solar energy system is located on the real property, a prominent title at the top of the document in 14-point type stating “Notice of an Independent Solar Energy Producer Contract” and the following statement:

“This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that is located on the real property. The independent solar energy producer provides electric service to the current owner of this real property through a long-term contract for electric service. The independent solar energy producer is required to provide a copy of the contract to a prospective buyer of the real property within ten (10) days of the receipt of a written request from the current owner of this real property.”

(B) If the solar energy system is located on an adjacent real property, a prominent title at the top of the document in 14-point type stating “Notice of an Independent Solar Energy Producer Contract” and the following statement:

“This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that is located on an adjacent real property. The independent solar energy producer provides electric service to the current owner of this real property through a long-term contract for electric service. The independent solar energy producer is required to provide a copy of the contract to a prospective buyer of this real property within ten (10) days of the receipt of a written request from the current owner of this real property.”

(2) The address and assessor’s parcel number of the real property against which the notice is recorded.

(3) The name, address, and telephone number of the independent solar energy producer, and any other contact information deemed necessary by the independent solar energy producer.

(4) A statement identifying whether the contract is a contract for the sale of electricity or for the lease of a solar energy system, and providing the dates on which the contract commences and terminates.

(5) A plain language summary of the potential costs, consequences, and assignment of responsibilities, if any, that could result in the event the contract is terminated.

(c) (1) The recorded Notice of an Independent Solar Energy Producer Contract does not constitute a title defect, lien, or encumbrance against the real property, and the independent solar energy producer shall be solely responsible for the accuracy of the information provided in the notice and for recording the document with the county recorder.

(2) The independent solar energy producer shall record a subsequent document extinguishing the Notice of an Independent Solar Energy Producer Contract if the contract is voided, terminated, sold, assigned, or transferred. If the independent solar energy producer transfers its obligation under the contract or changes its contact information, it shall record a new notice reflecting these changes within 30 days of their occurrence.

(3) Within 30 days of the termination of a contract for the use or sale of electricity or the lease of a solar energy system, the independent solar energy producer shall record a subsequent document extinguishing the Notice of an Independent Solar Energy Producer Contract from the title to the real property on which the electricity is generated, and from the title to any adjacent real property on which the electricity was used, in the office of the county recorder for the county in which the real property is located.

(d) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system shall provide a copy of the existing contract to a prospective buyer of the real property where the electricity is used or generated within ten (10) days of the receipt of a written request from the current owner of the real property.

(e) (1) All contracts for the sale of electricity by an independent solar energy producer to an entity or person, for use in a residential dwelling shall be made available to the commission upon its request, and shall be confidential, except as provided for in this subdivision. The disclosures required by subdivision (a) may be made open to public inspection or made public by the commission.

(2) A contract provided to the commission pursuant to this subdivision shall not be open to public inspection or made public, except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

(3) This subdivision does not eliminate or modify any rule or provision of law that provides for the confidentiality of information submitted to the commission in the course of its proceedings.

(f) A master-meter customer of an electric utility who purchases electricity or leases a solar energy system from an independent solar energy producer,

and who provides electric service to users who are tenants of a mobilehome park, apartment building, or similar residential complex, shall do both of the following:

(1) Charge each user of the electric service that is under a submetered system a rate for the solar generated electricity not to exceed the rate charged by the independent solar energy producer or the electric utility's rate for an equivalent amount of electricity, whichever is lower.

(2) Comply with the provisions of Section 739.5 or 12821.5, and any rules set forth by an electric utility for master-meter customers.

(g) No transfer of real property subject to this article shall be invalidated solely because of the failure of any person to comply with any provision of this article. Any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this article shall be civilly liable in the amount of actual damages suffered by a transferee or transferor of the real property as a consequence of that violation or failure.